

**§ 862.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).**

The exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I or II device is only to the extent that the device has existing or reasonably foreseeable characteristics of commercially distributed devices within that generic type or, in the case of in vitro diagnostic devices, only to the extent that misdiagnosis as a result of using the device would not be associated with high morbidity or mortality. Accordingly, manufacturers of any commercially distributed class I or II device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from the intended use of a legally marketed device in that generic type of device; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only;

(b) The modified device operates using a different fundamental scientific technology than a legally marketed device in that generic type of device; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology; or

(c) The device is an in vitro device that is intended:

(1) For use in the diagnosis, monitoring, or screening of neoplastic diseases with the exception of immunohistochemical devices;

(2) For use in screening or diagnosis of familial or acquired genetic disorders, including inborn errors of metabolism;

(3) For measuring an analyte that serves as a surrogate marker for screening, diagnosis, or monitoring

life-threatening diseases such as acquired immune deficiency syndrome (AIDS), chronic or active hepatitis, tuberculosis, or myocardial infarction or to monitor therapy;

(4) For assessing the risk of cardiovascular diseases;

(5) For use in diabetes management;

(6) For identifying or inferring the identity of a microorganism directly from clinical material;

(7) For detection of antibodies to microorganisms other than immunoglobulin G (IgG) or IgG assays when the results are not qualitative, or are used to determine immunity, or the assay is intended for use in matrices other than serum or plasma;

(8) For noninvasive testing as defined in § 812.3(k) of this chapter; and

(9) For near patient testing (point of care).

[65 FR 2304, Jan. 14, 2000]

**Subpart B—Clinical Chemistry Test Systems**

**§ 862.1020 Acid phosphatase (total or prostatic) test system.**

(a) *Identification.* An acid phosphatase (total or prostatic) test system is a device intended to measure the activity of the acid phosphatase enzyme in plasma and serum.

(b) *Classification.* Class II.

**§ 862.1025 Adrenocorticotrophic hormone (ACTH) test system.**

(a) *Identification.* An adrenocorticotrophic hormone (ACTH) test system is a device intended to measure adrenocorticotrophic hormone in plasma and serum. ACTH measurements are used in the differential diagnosis and treatment of certain disorders of the adrenal glands such as Cushing's syndrome, adrenocortical insufficiency, and the ectopic ACTH syndrome.

(b) *Classification.* Class II.

**§ 862.1030 Alanine amino transferase (ALT/SGPT) test system.**

(a) *Identification.* An alanine amino transferase (ALT/SGPT) test system is a device intended to measure the activity of the enzyme alanine amino transferase (ALT) (also known as a serum glutamic pyruvic transaminase or SGPT) in serum and plasma. Alanine

amino transferase measurements are used in the diagnosis and treatment of certain liver diseases (e.g., viral hepatitis and cirrhosis) and heart diseases.

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

[52 FR 16122, May 1, 1987, as amended at 65 FR 2305, Jan. 14, 2000]

#### § 862.1035 Albumin test system.

(a) *Identification*. An albumin test system is a device intended to measure the albumin concentration in serum and plasma. Albumin measurements are used in the diagnosis and treatment of numerous diseases involving primarily the liver or kidneys.

(b) *Classification*. Class II.

#### § 862.1040 Aldolase test system.

(a) *Identification*. An aldolase test system is a device intended to measure the activity of the enzyme aldolase in serum or plasma. Aldolase measurements are used in the diagnosis and treatment of the early stages of acute hepatitis and for certain muscle diseases such as progressive Duchenne-type muscular dystrophy.

(b) *Classification*. Class I (general controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

[52 FR 16122, May 1, 1987, as amended at 65 FR 2305, Jan. 14, 2000]

#### § 862.1045 Aldosterone test system.

(a) *Identification*. An aldosterone test system is a device intended to measure the hormone aldosterone in serum and urine. Aldosterone measurements are used in the diagnosis and treatment of primary aldosteronism (a disorder caused by the excessive secretion of aldosterone by the adrenal gland), hypertension caused by primary aldosteronism, selective hypoaldosteronism, edematous states, and other conditions of electrolyte imbalance.

(b) *Classification*. Class II.

#### § 862.1050 Alkaline phosphatase or isoenzymes test system.

(a) *Identification*. An alkaline phosphatase or isoenzymes test system is a device intended to measure alkaline phosphatase or its isoenzymes (a group of enzymes with similar biological activity) in serum or plasma. Measurements of alkaline phosphatase or its isoenzymes are used in the diagnosis and treatment of liver, bone, parathyroid, and intestinal diseases.

(b) *Classification*. Class II.

#### § 862.1060 Delta-aminolevulinic acid test system.

(a) *Identification*. A delta-aminolevulinic acid test system is a device intended to measure the level of delta-aminolevulinic acid (a precursor of porphyrin) in urine. Delta-aminolevulinic acid measurements are used in the diagnosis and treatment of lead poisoning and certain porphyrias (diseases affecting the liver, gastrointestinal, and nervous systems that are accompanied by increased urinary excretion of various heme compounds including delta-aminolevulinic acid).

(b) *Classification*. Class I (general controls). The device is exempt from premarket notification procedures in subpart E of part 807 of this chapter subject to § 862.9.

[52 FR 16122, May 1, 1987, as amended at 65 FR 2305, Jan. 14, 2000]

#### § 862.1065 Ammonia test system.

(a) *Identification*. An ammonia test system is a device intended to measure ammonia levels in blood, serum, and plasma. Ammonia measurements are used in the diagnosis and treatment of severe liver disorders, such as cirrhosis, hepatitis, and Reye's syndrome.

(b) *Classification*. Class I.

#### § 862.1070 Amylase test system.

(a) *Identification*. An amylase test system is a device intended to measure the activity of the enzyme amylase in serum and urine. Amylase measurements are used primarily for the diagnosis and treatment of pancreatitis (inflammation of the pancreas).

(b) *Classification*. Class II.